* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.A. NO.699/2005

% Date of Decision : 6th of August, 2007

\# VAHID ALI @ DEVA .....Appellant
! Through : Mr. V.K. Raina, Advocate

versus

$ STATE .....Respondent
^ Through : Ms. Richa Kapoor, APP for State

* **CORAM:**
HON'BLE MR. JUSTICE R.S. SODHI
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: **R.S. SODHI, J. (Oral)**

1. This is an appeal arising out of judgment and order of Additional Sessions Judge, Delhi in Sessions Case No. 119/2001 whereby the learned Judge by an order dated 17th December 2003 has held appellant guilty for the offence punishable under Section 302 IPC for the murder of Laxmi

and further by his order order 22nd December 2003 has sentenced the appellant to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default simple imprisonment for one year.

2. The facts of the case as noticed by the learned trial Court are as follows:-

> "Brief facts leading to the prosecution case are that on 18019-97, Vahid Ali and Laxmi were admitted in JPN Hospital in burnt condition. SI Gernail Singh, ASI M.H. KHan and HC Dev Karan and constable Sunil went to the hospital and collected the MLCs of Vahid Ali and Laxmi. Both the injured were declared fit to make statement by the doctor. Statement of Laxmi was recorded who stated that she was working as a Kabadi alongwith her father Mahabir. She had one house in Bihari Basti wherein Vahid Ali alias Deva was a tenant in one room for the last about four years. On that day, at about 7 P.M., she alongwith her father went to Bihari Basti to collect the rent from Vahid Ali. When she demanded rent from Vahid Ali, he replied that what she would do with rent, let she marry him. She became furious and told him that she was already married. Whey she was using this language for her but again, he stated that he wanted to marry her and if she would not be his, he would not let her be anybody's else. On this, when she scolded him, he picked up a kerosene stove and poured kerosene oil on her. She raised alarm. By the time, her father reached there. Vahid Ali burnt a

matchstick and threw it on her. She grappled Vahid Ali to save herself. He father took her to the hospital. She further stated that Vahid Ali poured kerosene on her and put her on fire with intend to kill her because he intended that if she would not marry her, he would kill her. On this statement, FIR U/s. 307 IPC was got recorded. Rukka was sent to the police station through HC Dev Karan. Place of occurrence was got photographed and one stove and burnt cloth pieces as well as matchstick was taken into possession by the police. On 20-10-97, accused was arrested. On 23-10-97, Laxmi expired in JPN Hospital. Inquest proceedings were conducted. After conducting post mortem, dead body was handed over to the father of the deceased. As per post mortem report, the death in this case was due to Septicaemia consequent upon infected burn injuries on about 70% of total body surface area. After completing investigation, challan was filed in the court."

3. The prosecution in order to establish its case examined twenty one witnesses. PW-6 Mahabir is the father of the deceased who is the eye witness of the occurrence. The learned trial Court on the basis of the relevant material before it and on a careful analysis of the evidence adduced came to the conclusion that PW-6 was a reliable witness and was an eye witness of the occurrence. This statement is corroborated by the deceased in the MLC as also in the rukka which is the statement of the deceased recorded by

the IO on being declared fit to make statement. The Court after careful examination held that the prosecution had been able to establish its case beyond shadow of doubt.

4. In appeal counsel for the petitioner states that PW-6 is not a reliable witness since his presence has not been noticed by the PW-2 and PW-3. He also contends that statement of the deceased to the Doctor cannot be read into evidence since the Doctor who recorded the statement was not examined.

5. With the aid of learned counsel we have reassessed the material on record and have carefully gone through the statement of PW-6. We find that PW-6 has stated that:-

> "Laxmi deceased was my daughter and she was married with Sagir Ahmad. My daughter had another house in Bihari Basti, Yamuna Pushta. It is a two storeyed house. Accd. Vahid Ali present in court was residing in a room situated on the first floor of that house as a tenant for the last about 2/3 years. As such, he was known to me. On 18.10.97, myself and Laxmi went to the house where the accd. was living for demanding rent from him. We went there at about 7 pm. My daughter Laxmi went upstairs to collect the rent and I remained standing downstairs at a nearby tea stall. I heard a noise from the upstairs and I went

upstairs and heard that accd. was saying to Laxmi that she should marry him, otherwise he would not leave her to live with someone else. One stove was there and the lid of the same found open and a smell of kerosene oil was there. When I asked the accd. as to what he was doing. In the meantime, the accd. burnt a match stick and put fire on Laxmi. Laxmi told me that accd. had poured kerosene oil on her. Laxmi caught hold of the accd. as a result of which the accd. also received burn injuries on his arms. I raised the noise. In the meantime, my son-in-law Sagir, Satbir and Sher Singh came there. We tore the clothes of the deceased and I removed her to JPN Hospital in a TSR and got her admitted there. Police came in the hospital and recorded the statement of Laxmi. The doctors have also taken the statement of Laxmi. She stated that she had been burnt by the accd. after pouring kerosene oil on her. After the statement of the deceased, I accompanied the police to the spot. The photographs were taken of the spot, the site plan was prepared. The stove, the lid of stove, the burnt clothes of the deceased, match box and half burnt match stick which was lying there was also lifted and sealed. The half burnt pillow was also sealed. All these articles were seized vide memo Ex. PW6/A which is thumb marked by me at point A. From the spot, the accd. had run towards the house of his sister. The accd. was also brought to the hospital by his sister when I had reached there with the deceased. The accd. was arrested on 20.10.97 from the hospital and his personal search memo Ex. PW6/B was prepared which is thumb marked by me at point A. The stove is Ex.P.1, the half burnt pillow is Ex.P.2, match box is Ex.P.3 and the burnt clothes are Ex.P.4

> and P.5, two bangles of Laxmi are Ex.P.6 and P.7 are the same. Laxmi died in the hospital on 23.10.97 and I identified the deadbody vide my statement Ex.PW6/C and the deadbody was received by me vide memo Ex.PW6/D. Laxmi was having burn injury and her right hand thumb was burnt and bandaged and as such, she put her left hand thumb impression on her statement in my presence at point A on Ex.PW5/A. Vahid Ali is also known by the name Deva."

6. There is no meaningful cross-examination of this witness and defence taken by the accused that he sustained burn injuries while saving the deceased has not been substantiated. On the other hand, besides PW-6 giving the cause of injury sustained by the accused, we have the statement of Laxmi recorded by the Investigating Officer which became the FIR in this case to the effect that while she was burning she caught hold of the accused.

7. From the evidence on record primarily PW-6 as also PW-5/A it stands proved that the accused was a tenant of Laxmi at the ground floor of the house in question. On 18.10.97 Laxmi alongwith her father went to collect rent. The accused did not pay rent, but instead got into altercation with Laxmi. PW-6 heard the altercation and went upstairs. There he saw Laxmi drenched in oil. On his

questioning the accused, the accused struck a matchstick and set ablaze Laxmi. Laxmi, in panic, clung to the accused in which process, the accused sustained burns. Laxmi was taken to the hospital by PW-6 where she narrated the incident to the doctor as also to the police man, who recorded the same in the form of Rukka, sent it to the Police Station wherein FIR Ex. PW 5/A was recorded. It is in evidence that the narration of incident given to the doctor by Laxmi was when she was declared fit to make a statement. It is also in evidence that Laxmi's statement was recorded in the Rukka after she was declared fit to make a statement. With this evidence on record, we have no doubt that the prosecution has been able to bring home the charge as framed against the accused.

8. Having reappraised the material on record, we have come to the conclusion that the judgment of the trial Court under challenge suffers from no infirmity. We uphold the same and dismiss the appeal.

(R.S. SODHI)
JUDGE

(B.N.CHATURVEDI)

August 06, 2007 JUDGE

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